

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of I.S.T.B., Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

SHERRY LYNN BURCH,

Respondent-Appellant.

UNPUBLISHED
February 11, 2003

No. 238809
Wayne Circuit Court
Family Division
LC No. 98-373885

Before: Smolenski, P.J., and Wilder and Schuette, JJ.

PER CURIAM.

Respondent appeals by delayed leave granted the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g) and (j). We affirm.

I. Facts and Proceedings

In March 1998, a Family Independence Agency (FIA) Protective Services worker attempted to interview respondent regarding allegations that that respondent was making inappropriate statements, had no means to support her child, and might be harmful to herself and others. Respondent refused to allow the worker into her home and when the worker asked her questions, the answers respondent provided were unrelated to the questions posed. There was insufficient evidence to charge respondent with neglect at that time.

In December 1998, FIA received a second complaint involving the family. When a social worker interviewed respondent she again provided unresponsive answers to questions. I.S.T.B. was then removed from respondent's custody because of respondent's lack of cooperation with FIA and because FIA employees thought respondent could have a mental health problem. Respondent had no regular source of income at that time.

In April 1999, an adjudication hearing was held. Based upon the recommendation in a psychological report that I.S.T.B. be placed with respondent with in-home services, the court allowed I.S.T.B. to return to respondent's home. The psychological report also indicated that

respondent was not suffering from mental illness. For the first few months, respondent complied with the treatment plan for both counseling and in-home services. However, in August 1999, FIA again removed I.S.T.B. from respondent's home based upon allegations that respondent was making irrational statements and refused to believe that I.S.T.B. needed to wear her eyeglasses.

The referee held both a trial and dispositional hearing in October 1999. Cynthia Baxter, who provided in-home counseling to respondent through Parents and Children Together from May 1999 to August 1999, testified. Baxter stated that in August 1999, she had a conversation with respondent about I.S.T.B.'s eyeglasses that worried her. I.S.T.B. had lost her glasses and Baxter asked respondent if she had made plans to see a doctor to have the glasses replaced. Respondent told Baxter that I.S.T.B. did not need eyeglasses and that her vision was fine. Baxter asked I.S.T.B. if glasses helped her to see better and she replied that she did, but respondent interrupted I.S.T.B. to tell her that her glasses did not help her vision.

Ann McGibbon was an in-home services worker on this matter after I.S.T.B. was returned to respondent in April 1999. McGibbon testified that respondent was not complying with her treatment plan. Respondent had not taken I.S.T.B. to the doctor for either her eyeglasses or for a leg problem. I.S.T.B.'s left leg was severely bowed from her knee down to her foot causing a severe limp and pain when she walked long distances or ran. Children also teased her or asked her repeated questions about her leg. FIA workers asked respondent several times to take I.S.T.B. to have her leg evaluated but she refused. Respondent made statements that I.S.T.B.'s leg was bowed because people were harassing her and that I.S.T.B.'s other leg had straightened out because she stopped wearing diapers.

At the continuation of the trial in November 1999, Roslyn Stamps, another caseworker in this matter, informed the referee that respondent had refused to sign a parent-agency agreement because she did not want to attend counseling. Respondent also refused to attend parenting classes. Based on this testimony, the referee formally removed I.S.T.B. explaining that remaining in respondent's custody put I.S.T.B. at risk. The court indicated that it would consider termination of parental rights if respondent did not comply with the treatment plan within three months.

FIA filed a petition to terminate respondent's parental rights in April 2000. The court heard testimony on this petition to terminate respondent's parental rights in June 2000. FIA recommended to the court that respondent's parental rights be terminated because of her noncompliance with the treatment plan, her inability to recognize her need for assistance and the several irrational statements she made, possibly indicating that she had some mental health issues that needed to be addressed. A hearing was held in August 2000 on the petition to terminate respondent's parental rights. The referee informed the parties that she had spoken with I.S.T.B. and found her to be a very articulate and mature eleven-year-old child. The referee decided not to terminate respondent's parental rights, although there were statutory grounds proven by clear and convincing evidence. She felt that it was not in I.S.T.B.'s best interests to terminate respondent's parental rights at that time. The referee emphasized that it was then up to respondent to participate in counseling and a psychiatric program before I.S.T.B. would be permitted to return to her home.

A year later, in August 2001, FIA filed a second petition to terminate parental rights and the referee held a hearing in October 2001. The court agreed to hear the second petition because there was an offer of proof made that I.S.T.B. had changed her mind and now believed that termination of respondent's parental rights was in her best interests. At the hearing, a foster care worker, Jessica Suchan, testified that over the course of the year following the referee's initial decision not to terminate parental rights, she discussed with respondent the possibility that her parental rights might be terminated. Respondent was very upset and she told her daughter that if her rights were terminated, it would be as if I.S.T.B. were dead to respondent. "[I]ike someone blew off [I.S.T.B.'s] head".

Following this comment, Suchan talked to I.S.T.B. alone. At that time, I.S.T.B. told Suchan that she was scared of her mother because of the things she had done in the past. I.S.T.B. realized that her mother needed help for her problems. I.S.T.B. thought that terminating respondent's parental rights might be the best thing for I.S.T.B.. I.S.T.B. told Suchan on four or five occasions after visits with her mother that she was scared of her mother and did not want to live with her.

Respondent completed parenting classes in April 2001. Respondent was also referred to counseling services on multiple occasions, but never provided verification that she was attending. Suchan explained that since July 2000, respondent had not complied with the terms of her treatment plan. The essential component of her treatment plan was to attend therapy and respondent never provided verification that she was participating in counseling. Respondent was aware that if she did not comply with this requirement, I.S.T.B. would not be returned to her care. Based upon respondent's failure to comply with the terms of the treatment plan, and the wishes of I.S.T.B., the referee terminated respondents parental rights finding that the statutory grounds petitioner relied upon were all proven by clear and convincing evidence.

II. Standards of Review

This Court reviews a trial court's findings of fact in a parental termination case under the clearly erroneous standard. A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 5.974(I). Deference must be accorded to the trial court's assessment of the credibility of the witnesses before it. *In re Newman*, 189 Mich App 61, 65; 472 NW2d 38 (1991).

Respondent challenges the trial court's finding that petitioner made reasonable efforts to attempt to reunite respondent with her child before the court terminated her parental rights. This Court reviews a trial court's findings of fact under the clearly erroneous standard. A finding of fact is clearly erroneous when the reviewing court has a definite and firm conviction that a mistake has been made. *In re Miller, supra*.

III. Analysis

A. Respondent's Mental Health

Respondent first argues that the trial court improperly presumed that she suffered from an undiagnosed mental illness and that this erroneous presumption adversely affected these proceedings. We disagree.

While there was an abundance of testimony that respondent engaged in erratic behavior and made bizarre statements that caused caseworkers to question her mental stability, it is apparent that the court was well aware, as were the caseworkers, that a psychologist who evaluated respondent early in this matter concluded that she did not suffer from a mental illness. There is nothing in the trial court's findings to suggest that it erroneously believed that respondent was mentally ill. Indeed, when petitioner's attorney suggested in closing argument that respondent suffered from an undiagnosed mental illness, the court sustained respondent's objection and refused to consider the issue, consistent with the psychologist's diagnosis. Further, respondent has not demonstrated that she was treated inappropriately by the caseworkers because they may have believed that she suffered from an undiagnosed mental illness. Accordingly, we find no clear error with regard to this issue. *In re Miller, supra*.

B. Clear and Convincing Evidence

Respondent next argues that the statutory grounds for termination were not proven by clear and convincing evidence. We disagree.

The trial court found that the statutory grounds for termination were established primarily because respondent failed to address the underlying problems that led to the court's jurisdiction, and because respondent failed to make the necessary progress on her treatment plan to demonstrate that I.S.T.B. would be safe in her home.

A parent's failure to fully comply with the terms of a parent-agency agreement can support termination of the parent's rights if there is clear and convincing evidence that the treatment plan was necessary to improve the parent's behavioral deficiencies. *In the Matter of Mason*, 140 Mich App 734, 737; 364 NW2d 301 (1985).

In this case, respondent made some, but not significant, progress on her treatment plan. While respondent completed parenting classes, the evidence demonstrated that she did not benefit from the classes. Further, while it was apparent that counseling was critically necessary for respondent to address her inappropriate behavior around I.S.T.B. and her neglect of I.S.T.B.'s medical needs, respondent refused to participate in and complete the counseling requirement of her treatment plan, thereby supporting the trial court's decision to terminate her parental rights under each of the statutory grounds. Additionally, the evidence did not show that termination of respondent's parental rights was clearly not in the child's best interests. *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000).

C. Reunification Efforts

Respondent argues that termination of her parental rights was inappropriate because petitioner did not make reasonable efforts to reunite her with her daughter by offering services that were tailored to her individual needs. We disagree.

In general, the Family Independence Agency is required to make reasonable efforts to rectify the conditions that caused the child's removal from the parent's home through the adoption of a service plan, MCL 712A.18f. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000).

Here, the trial court found that petitioner made reasonable efforts to attempt to rectify the conditions in respondent's home and reunite this family. The evidence demonstrated that these efforts were unsuccessful, not because of any fault of the caseworkers, but because respondent refused to participate in the services offered. The caseworkers offered services that were consistent with the recommendations made by the psychologist who evaluated respondent. As recommended, respondent was offered services through the Parents and Children Together program. Those services were discontinued, however, because respondent refused to allow the caseworkers into her home. Even when subsequent referrals were made for services outside respondent's home, respondent refused to fully participate. The trial court did not clearly err in finding that reasonable efforts were made to reunite this family. *In re Miller, supra*. Respondent refused to participate in the services offered to her; thus, this case is distinguishable from *In re Newman, supra* at 65-68, and *In re Boursaw*, 239 Mich App 161, 176-177; 607 NW2d 408 (1999), dicta rejected in *In re Trejo, supra* at 353-354.

Affirmed.

/s/ Michael R. Smolenski

/s/ Kurtis T. Wilder

/s/ Bill Schuette